UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

REDSTONE PRESBYTERIAN SENIORCARE
Employer-Petitioner

and Case 06-UC-179416

SEIU HEALTHCARE PENNSYLVANIA, CTW CLC
LOCAL 585
Union

ORDER

The Employer's Request for Review of the Regional Director's dismissal of its unit clarification petition is denied as it raises no substantial issues warranting review.[1]

Dated, Washington, D.C., February 24, 2017

PHILIP A. MISCIMARRA, ACTING CHAIRMAN

MARK GASTON PEARCE, MEMBER

LAUREN McFERRAN, MEMBER

[1] Since 1990, the Union has been the certified and recognized bargaining representative of a unit, described in the parties' recently-expired contract as "all regular part-time and full-time employees" employed by the Employer at its Greensburg, Pennsylvania facility. The contract contained wage provisions for nine specific classifications. The Employer's petition, as amended, seeks to exclude three classifications of dietary employees from the unit on the grounds that the Employer recently subcontracted its dietary work to another employer. Although unit clarification is appropriate for resolving "ambiguities" concerning the unit placement of employees whose classification has undergone recent, substantial changes in duties and responsibilities, *Union Electric Co.*, 217 NLRB 666, 667 (1975); *Bethlehem Steel Corp.*, 329 NLRB 243, 243-4 (1999), the Employer here has failed to identify any "ambiguity" requiring clarification. That is, if dietary employees at the Greensburg facility are *not employed by the Employer* then, by definition, they are not covered under the contractual unit description, and there is no need to expressly exclude their classifications. Further, the unit has historically been a wall-to-wall unit of all of the Employer's employees at the facility, and the Employer has provided no compelling basis for altering the historical unit. The Employer's petition also sought to exclude two other "service" classifications (laundry aides and activity aides) from the unit on the grounds that, without the subcontracted dietary employees, those two classifications no longer share a sufficient community of interest with the remaining "healthcare" employees in the unit (LPNs and CNAs). However, the subcontracting of dietary employees did not effect a "substantial change" in the duties and responsibilities of the employees that the Employer now seeks to exclude from the unit. Accordingly, the dismissal of the Employer's petition does not warrant review.

In denying review, Acting Chairman Miscimarra notes that the Employer's Request for Review relies on *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), enfd. sub nom. *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013). The Regional Director does not rely on *Specialty Healthcare*, but she states that *Specialty Healthcare* applies to representation petitions. Acting Chairman Miscimarra disagrees with *Specialty Healthcare* for the reasons he articulated in *Macy's, Inc.*, 361 NLRB No. 4, slip op. at 22-33 (2014) (Member Miscimarra, dissenting).